

REMARKS

In response to the Office Action dated November 26, 2004, Applicants respectfully request reconsideration based on the above amendments and the following remarks. Claims 1-24 are pending in this application. Applicants respectfully submit that the claims as presented are in condition for allowance.

Interview Summary

Applicants' attorney Kenneth R. Eiferman and the Examiner discussed the claims of the present application in relation to the cited references in a telephonic interview on January 14, 2005. Mr. Eiferman and the Examiner discussed the above amendments, and the Examiner stated that the above amendments appear to overcome the rejection of record.

Claims 1, 3-11, 16-20, and 22-24 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,016,307 ("Kaplan") in view of U.S. Patent No. 6,438,110 ("Rai"). Claims 1, 6, 7, 9-16, 18, 19, and 21-24 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,761,602 ("Wagner") in view of Rai. Claims 2-5, 17, and 20 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Wagner in view of Rai and in further view of U.S. Patent No. 6,195,692 ("Hsu"). Claim 8 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Wagner in view of Rai and in further view of Routing in the Internet ("Huitema"). These rejections are respectfully traversed.

Rejections Under 35 U.S.C. § 103(a)

1. Claims 1, 3-11, 16-20, and 22-24 stand rejected under 35 U.S.C. § 103(A) as allegedly being unpatentable over U.S. Patent No. 6,016,307 ("Kaplan") in view of U.S. Patent No. 6,438,110 ("Rai"). Applicants respectfully disagree.

The present application discloses systems and methods for content transmission network selection. More specifically there is disclosed:

"[Transmission] requests are transmitted over a broadband network, a back channel to a broadcast network, or both to a transmission network selector. The transmission network selector determines whether the content will be transmitted over a broadcast

network or a broadband network. This determination is based on, the information provided with the transmission request, information about the content itself, and information about the broadcast and broadband networks (Application, Summary of the invention)."

Claim 1, which is representative of the other independent claims, is directed to a "method for content transmission network selection." The claimed method comprises the following steps:

"identifying *video programming* content to be transmitted based on at least one transmission request;
determining whether to transmit the *video programming* content using a broadcast network or a broadband network based upon characteristics of the transmission request comprising a future time at which the video programming content is requested to be viewed, *the determination based at least in part on an option of delivering the video programming content either at a time that the request is received or at the future time*; and
transmitting the *video programming* content on one of the broadcast network or broadband network."

Neither Kaplan nor Rai, whether alone or in combination, teach or suggest a network determination based on an option of delivering content either at a time that the request is received or at a future time. Kaplan does not mention the possibility of a future content delivery time. As noted by the Examiner, however, Rai discloses a future desired connection start time. However, as discussed in the interview, neither of the references teach or suggest *determining* a transmission network based on the possibility of transmitting content either at a present time or at the future time.

Claims 16 and 19 recite similar features as claim 1 and are considered allowable over Kaplan and Rai for at least the same reasons. Claims 2-15, 17-18, and 20-24 depend from claims 1, 16, and 19, respectively, and are considered allowable for at least the same reasons.

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**PATENT
REPLY FILED UNDER EXPEDITED
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37 CFR § 1.116**

2. Claims 1, 6, 7, 9-16, 18, 19, and 21-24 also stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,761,602 ("Wagner") in view of Rai. Applicants respectfully disagree.

Wagner is directed to a hybrid multi-channel data transmission system. Wagner does not teach or suggest a network determination based on an option of delivering content either at a time that the request is received or at the future time. Accordingly, claims 1, 16 and 19 are considered allowable over Wagner and Rai for at least the same reasons as discussed above.

With respect to claims 2-5, 17, and 20, Hsu is relied upon to make up for the deficiencies of Wagner and Rai. However, Hsu also does not disclose or suggest a network determination based on an option of delivering content either at a time that the request is received or at the future time as recited in independent claims 1, 16, and 19. Therefore, claims 2-5, 17, and 20 are considered allowable over any combination of Wagner, Rai, and Hsu

With respect to claim 8, Huitema is relied upon to make up for the deficiencies of Wagner and Rai. However, Huitema does not disclose or suggest a network determination based on an option of delivering content either at a time that the request is received or at the future time as recite in independent claim 1. Therefore, claim 8 is considered allowable over any combination of Wagner, Rai, and Huitema.


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CONCLUSION

In view of the above remarks, Applicant respectfully submits that the present application is in condition for allowance. Reconsideration of the application and an early Notice of Allowance are respectfully requested.

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